

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11 CONNIE ARTEAGA; and EMIDIA) 12 SOTO,) 13) 14 v. Plaintiffs,) 15) 16 CARMAX AUTO SUPERSTORES) 17 WEST COAST, INC.; and) 18 CARMAX AUTO SUPERSTORES) 19 CALIFORNIA, LLC.) 20) 21) 22) 23) 24) 25) 26) 27) 28) 29) 30) 31) 32) 33) 34) 35) 36) 37) 38) 39) 40) 41) 42) 43) 44) 45) 46) 47) 48) 49) 50) 51) 52) 53) 54) 55) 56) 57) 58) 59) 60) 61) 62) 63) 64) 65) 66) 67) 68) 69) 70) 71) 72) 73) 74) 75) 76) 77) 78) 79) 80) 81) 82) 83) 84) 85) 86) 87) 88) 89) 90) 91) 92) 93) 94) 95) 96) 97) 98) 99) 100) 101) 102) 103) 104) 105) 106) 107) 108) 109) 110) 111) 112) 113) 114) 115) 116) 117) 118) 119) 120) 121) 122) 123) 124) 125) 126) 127) 128) 129) 130) 131) 132) 133) 134) 135) 136) 137) 138) 139) 140) 141) 142) 143) 144) 145) 146) 147) 148) 149) 150) 151) 152) 153) 154) 155) 156) 157) 158) 159) 160) 161) 162) 163) 164) 165) 166) 167) 168) 169) 170) 171) 172) 173) 174) 175) 176) 177) 178) 179) 180) 181) 182) 183) 184) 185) 186) 187) 188) 189) 190) 191) 192) 193) 194) 195) 196) 197) 198) 199) 200) 201) 202) 203) 204) 205) 206) 207) 208) 209) 210) 211) 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1 May 14, 2014 [22]. This Matter was taken under
2 submission on June 23, 2014 [23]. Having reviewed all
3 papers submitted pertaining to the Motion, and having
4 considered all arguments presented to the Court, the
5 Court **NOW FINDS AND RULES AS FOLLOWS:**

6 Defendants' Motion to Dismiss is hereby **DENIED**.

7 **I. BACKGROUND**

8 Plaintiffs are individuals who purchased a vehicle
9 from Defendants in Los Angeles County, California. FAC
10 ¶ 2. Defendant CarMax West Coast is a corporation, and
11 Defendant CarMax California is a limited liability
12 company. Id. at ¶ 3. Both are authorized to do
13 business in California and are incorporated in
14 Virginia. Id. at ¶ 4. Defendants do business in all
15 counties of California and are engaged in the sale and
16 distribution of motor vehicles and related equipment
17 and services. Id. Defendants are also in the business
18 of marketing, supplying, and selling written warranties
19 to the public through a system of authorized
20 dealerships. Id. at ¶ 3.

21 On April 4, 2013, Plaintiffs purchased a 2009 BMW
22 from Defendant CarMax California. Id. at ¶ 7. The
23 vehicle price exceeded \$40,703.76, including sales tax,
24 registration charges, document fees, and other
25 collateral charges. Id. at ¶ 8.

26 Defendants issued several written warranties to
27 Plaintiffs and other standard warranties fully outlined
28 in Defendants' Warranty Booklet. Id. at ¶ 9. The

1 written factory warranties covered any non-conformities
2 or defects in materials or workmanship and included a
3 provision stating that Defendants would repair the
4 vehicle or take other remedial action free of charge if
5 it failed to meet Defendants' specifications. Id. at ¶
6 28. Plaintiffs have met all of the obligations and
7 preconditions provided in the written warranties. Id.
8 at ¶ 31.

9 Plaintiffs claim that they experienced various
10 "defects and/or non-conformities" that "substantially
11 impaired the use, value, and safety of the vehicle" and
12 rendered it unfit for its ordinary purpose shortly
13 after taking possession of it on April 4, 2013. Id. at
14 ¶ 10. The alleged defects include: 1) a defective
15 engine, 2) defective tail light bulbs, 3) a defective
16 front parking light, 4) squeaking when turning the
17 steering wheel, and 5) squeaking brakes. Id. at ¶ 12.
18 Plaintiffs claim that the said defects indicate that
19 the vehicle was not substantially free of defects and
20 in safe condition at the time of sale or at anytime
21 afterward. Id. at ¶ 10. Plaintiffs also claim that
22 they could not have discovered the defects prior to
23 their acceptance of the vehicle. Id. at ¶ 16.
24 Plaintiffs allege that they presented the vehicle to
25 Defendants, their authorized repair facilities, and
26 third-party repair facilities, but Defendants failed to
27 repair it. Id. at ¶¶ 12, 14.

28 Plaintiffs revoked acceptance of the vehicle in

1 writing, but Defendants refused Plaintiffs' demand for
2 revocation. Id. at ¶ 20. Plaintiffs plead that the
3 vehicle remains in a substantially defective and
4 unmerchantable condition and continues to exhibit the
5 above mentioned defects. Id. at ¶ 21.

6 On January 27, 2014, Plaintiffs filed their initial
7 Complaint in Los Angeles Superior Court. Defendants
8 removed to this Court on March 13, 2014 [1]. On April
9 9, 2014, Plaintiffs filed their FAC, alleging causes of
10 action for: (1) breach of express warranty pursuant to
11 the federal Magnuson-Moss Warranty Act ("MMWA"); (2)
12 breach of implied warranty of merchantability pursuant
13 to the MMWA; (3) breach of express warranty pursuant to
14 the California Song-Beverly Consumer Warranty Act
15 ("Song-Beverly Act"); (4) breach of implied warranty of
16 merchantability pursuant to the Song-Beverly Act. FAC
17 ¶¶ 23-40.

18 II. LEGAL STANDARD

19 A. Motion to Dismiss Pursuant to Rule 12(b)(6)

20 Federal Rule of Civil Procedure 12(b)(6) allows a
21 party to move for dismissal of one or more claims if
22 the pleading fails to state a claim upon which relief
23 can be granted. Dismissal can be based on a lack of
24 cognizable legal theory or lack of sufficient facts
25 alleged under a cognizable legal theory. Balistreri v.
26 Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.
27 1990). However, a party is not required to state the
28 legal basis for its claim, only the facts underlying

1 it. McCalden v. Cal. Library Ass'n, 955 F.2d 1214,
2 1223 (9th Cir. 1990). In a Rule 12(b)(6) motion to
3 dismiss, a court must presume all factual allegations
4 of the complaint to be true and draw all reasonable
5 inferences in favor of the non-moving party. Klarfeld
6 v. United States, 944 F.2d 583, 585 (9th Cir. 1991).

7 The question presented by a motion to dismiss is
8 not whether a plaintiff will prevail in the action, but
9 whether a plaintiff is entitled to offer evidence in
10 support of its claim. Swierkiewica v. Sorema N.A., 534
11 U.S. 506, 511 (2002). "While legal conclusions can
12 provide the framework for a complaint, they must be
13 supported by factual allegations." Bell Atl. Corp. v.
14 Twombly, 550 U.S. 544, 557 (2007). "'Entitle[ment] to
15 relief' requires more than labels and conclusions, and
16 a formulaic recitation of a cause of action's elements
17 will not do." Id. at 555 (2007) (internal citation
18 omitted). Although specific facts are not necessary if
19 the complaint gives the defendant fair notice of the
20 claim and the grounds upon which the claim rests, a
21 complaint must nevertheless "contain sufficient factual
22 matter, accepted as true, to state a claim to relief
23 that is plausible on its face." Ashcroft v. Iqbal, 556
24 U.S. 662, 678 (2009) (internal quotation marks
25 omitted).

26 If dismissed, a court must then decide whether to
27 grant leave to amend. The Ninth Circuit has repeatedly
28 held that a district court should grant leave to amend

1 even if no request to amend the pleadings was made,
 2 unless it determines that the pleading could not
 3 possibly be cured by the allegation of other facts.
 4 Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000).

5 **III. DISCUSSION**

6 Plaintiffs allege causes of action for: (1) breach
 7 of express warranty under the Song-Beverly Act, (2)
 8 breach of the implied warranty of merchantability under
 9 the Song-Beverly Act, (3) breach of express warranty
 10 under the MMWA, and (4) breach of implied warranty
 11 under the MMWA. FAC ¶¶ 23-53.

12 Defendants argue that the FAC does not allege facts
 13 sufficient to support Plaintiffs' claims for breach of
 14 express warranty and breach of the implied warranty of
 15 merchantability brought under both the California Song-
 16 Beverly Act and the MMWA. Defendants move to dismiss
 17 the entire FAC without leave to amend under Federal
 18 Rule of Civil Procedure 12(b)(6).

19 **A. Breach of Express Warranty Under the Song-Beverly** 20 **Act**

21 Defendants argue that Plaintiffs' breach of express
 22 warranty claim fails because Plaintiffs fail to plead
 23 facts sufficient to show that the alleged defects
 24 substantially affected the value, use, or safety of the
 25 vehicle. Reply at 7:2-6.

26 The Song-Beverly Act defines an "express warranty"
 27 as a written statement arising out of a sale to the
 28 consumer of a consumer good pursuant to which the

1 manufacturer, distributor, or retailer undertakes to
2 preserve or maintain the utility or performance of the
3 consumer good or provide compensation if there is a
4 failure in utility or performance. Cal. Civ. Code §
5 1791.2(a). Plaintiffs stating a breach of express
6 warranty claim must meet the following elements: (1)
7 the product had a defect or nonconformity covered by
8 the express warranty; (2) the product was presented to
9 an authorized representative of the manufacturer for
10 repair; and (3) the manufacturer or its representative
11 did not repair the defect or nonconformity after a
12 reasonable number of repairs. Gonzalez v. Drew Indus.
13 Inc., 750 F. Supp. 2d 1061, 1073 (C.D. Cal. 2007).

14 "Nonconformities" are defined as problems that
15 substantially impair the use, value, or safety of the
16 vehicle. Cal. Civ. Code § 1793.22(e)(1).

17 The general rule in California is that an express
18 warranty does not cover repairs made after the
19 applicable time or mileage period have elapsed.
20 Clemens v. DaimlerChrysler Corp., 534 F.3d 1017, 1023
21 (9th Cir. 2009). In addition, a manufacturer is not
22 liable for failure to disclose a defect that manifests
23 itself after the expiration of the warranty period
24 unless such omission: (1) is contrary to a
25 representation actually made by the defendant or (2)
26 pertains to a fact the defendant was obligated to
27 disclose. Keegan v. Am. Honda Motor Co., Inc., 838 F.
28 Supp. 2d 929, 941 (C.D. Cal. 2012). California law

1 requires that a warrantor provide a thirty-day warranty
2 period to allow a buyer to return the purchased device
3 within thirty days of the date of receipt if the device
4 is unsatisfactory. Cal. Civ. Code § 1793.02(a).

5 However, a seller may specify a longer period. Id.

6 The Court hereby **DENIES** Defendants' Motion to
7 Dismiss Plaintiffs' claim for breach of express
8 warranty under the Song-Beverly Act because Plaintiffs
9 plead facts sufficient to support this claim.

10 Plaintiffs meet the first element of their breach
11 of express warranty claim by alleging that the 2009 BMW
12 suffered from defects including: a defective engine, a
13 defective headlamp bulb, defective tail light bulbs, a
14 defective front parking light, a squeaking steering
15 wheel, and squeaking breaks. FAC ¶ 12. While
16 Defendants argue that these defects do not indicate
17 that the use, value, and safety of the car was
18 substantially impaired as required by Cal. Civ. Code §
19 1793.22(e)(1), Defendants simply ignore Plaintiffs'
20 assertion that their engine was defective. Such an
21 assertion is sufficient to indicate that the vehicle
22 was substantially impaired because a car with a
23 defective engine cannot be driven.

24 In addition, Plaintiffs sufficiently plead the
25 second element of their express warranty claim because
26 they assert that they presented the vehicle to
27 Defendants for repair. FAC ¶ 12-13. Defendants argue
28 that Plaintiffs do not meet this second element because

1 Plaintiffs do not indicate whether they offered the
2 vehicle to Defendants for repair within Defendants'
3 thirty-day express warranty period. Mot. 8:22-26.
4 Defendants aver that this is fatal to Plaintiffs'
5 express warranty claim because a warrantor has no
6 warranty obligation outside of the warranty period.
7 Id. at 8:26-27.

8 However, the FAC does not state the express
9 warranty period, and Defendants do not provide the
10 Court with a copy of the warranty. Plaintiffs only
11 state that Defendants issued to Plaintiffs several
12 written warranties and other standard warranties
13 outlined in Defendants' Warranty Booklet. FAC ¶ 9.
14 Because California law allows a warrantor to specify a
15 warranty period longer than the mandated thirty days
16 (Cal. Civ. Code § 1793.02(a)), in the absence of proof
17 that the express warranty was only for thirty days,
18 Plaintiffs' claim is viable even if they did not plead
19 that they offered the vehicle to Defendants within
20 thirty days. In addition, Plaintiffs plead that
21 Defendants violated the express written warranties
22 shortly after Plaintiffs purchased the car. Id. at ¶
23 10. Assuming that all of the facts are true,
24 Plaintiffs have alleged sufficient facts to support
25 their breach of express warranty claim regardless of
26 their failure to allege that they submitted the car for
27 repairs within thirty days of purchase.

28 Furthermore, Plaintiffs sufficiently plead the

1 third element of their breach of express warranty claim
2 because they allege that Defendants were unable to
3 repair the vehicle within a reasonable number of
4 attempts. FAC ¶ 14. This fact, along with the fact
5 that the car suffered from a defective engine are
6 sufficient to show that the vehicle continues to be
7 substantially impaired.

8 Assuming that all of Plaintiffs' allegations are
9 true, Plaintiffs plead sufficient facts to support a
10 breach of express warranty claim under the Song-Beverly
11 Act. Accordingly, the Court hereby **DENIES** Defendants'
12 Motion with respect to this claim.

13 **B. Breach of Implied Warranty Under the Song-Beverly**
14 **Act**

15 Defendants next argue that Plaintiffs' implied
16 warranty claim fails because Plaintiffs do not plead
17 that the defects rendered the vehicle unusable for its
18 intended purpose. Mot. 1:22-25.

19 The California Song-Beverly Act requires that
20 consumer goods sold at retail must be accompanied by
21 the manufacturer's and the retail seller's implied
22 warranty that the goods are merchantable. Ehrlich v.
23 BMW of North Am., LLC, 801 F. Supp. 2d 908, 921 (C.D.
24 Cal. 2010). In general, the implied warranty of
25 merchantability ensures that goods are "fit for the
26 ordinary purpose for which such goods are used." Id.
27 (citing Mexia v. Rinker Boat Co., 174 Cal. App. 4th.
28

1 1297, 1303 (2009)).¹

2 Plaintiffs and Defendants dispute whether the car
3 sold to Plaintiffs was fit for its "ordinary purpose."
4 Defendants argue that "ordinary use" means that the
5 vehicle functions, even if it is not perfect. Mot.
6 6:21-26. Plaintiffs, on the other hand, argue that
7 "ordinary use" means "in safe condition and
8 substantially free of defects." Opp'n 7:22-8:1.

9 Unlike express warranties, an implied warranty of
10 merchantability requires only a "minimum level of
11 quality." Birdsong v. Apple, Inc., 590 F.3d at 955,
12 958 (9th Cir. 2009) (citing Am. Suzuki Motor Corp. v.
13 Superior Court, 37 Cal. App. 4th 1291, 1295 (1995). A
14 breach of the implied warranty of merchantability
15 occurs if the product lacks "even the most basic degree
16 of fitness for ordinary use." Id. It is sufficient
17 for a vehicle to meet the minimum requirement if it is
18 fit for driving. Keegan, 838 F. Supp. 2d at 945. As
19 cars are designed to provide transportation, the
20 implied warranty of merchantability is a guarantee that
21 they will operate in a safe condition and be

22
23 ¹ The Song-Beverly Act states that the implied warranty of
24 merchantability guarantees that consumer goods meet the following
25 requirements: (1) pass without objection in the trade under the
26 contract description; (2) are fit for the ordinary purposes for
27 which such goods are used; (3) are adequately contained,
28 packaged, and labeled; and (4) conform to the promises or
affirmations of fact made on the container or label. Cal. Civ.
Code § 1791.1(a). Because Plaintiffs only allege that Defendants
have not met the second requirement, the Court need not consider
whether Plaintiffs plead facts showing that Defendants failed to
meet the other requirements of the implied warranty.

1 substantially free of defects. Id. at 946. Thus,
2 where a car can provide safe, reliable transportation,
3 it is generally considered merchantable. Id. (quoting
4 Carlson v. General Motors Corp., 883 F.2d 287, 297 (4th
5 Cir. 1989)).

6 The Court hereby **DENIES** Defendants' Motion to
7 Dismiss Plaintiffs' claim for breach of implied
8 warranty of merchantability because Plaintiffs plead
9 sufficient facts showing that they were unable to use
10 the vehicle within the implied warranty's duration.
11 Plaintiffs describe defects such as a defective engine,
12 defective tail light bulbs, a defective front parking
13 light, squeaking when turning the steering wheel, and
14 squeaking brakes. FAC ¶ 12. Defendants' argument
15 focuses entirely on the minor defects pled and
16 overlooks the fact that the engine was not functioning
17 properly. A defective engine may imply that the car
18 was unsafe or unfit for driving because a car with a
19 defective engine cannot be driven.

20 Defendants attempt to distinguish the immediate
21 case from Isip v. Mercedes-Benz, LLC, 155 Cal. App. 4th
22 19 (2007), which Plaintiffs cite in their Opposition.
23 In Isip, buyers who purchased a car that suffered from
24 a substantial number of defects such as "malodorous
25 air-conditioning, a leaking transmission, transmission
26 hesitation, and a clanking brake" were able to assert a
27 claim for breach of implied warranty, even though their
28 car was still drivable. Isip, 155 Cal. App. 4th at 27.

1 Defendants argue that the defects experienced by the
2 car in Isip are more substantial than those experienced
3 by Plaintiffs' car in the immediate case. However, the
4 analysis in Isip is not applicable to this case. As
5 Plaintiffs already plead facts showing that they were
6 unable to use their vehicle, Defendants' argument is
7 groundless.

8 In addition, Defendants aver that Plaintiffs fail
9 to plead facts that show that such defects occurred
10 within the implied warranty period of thirty days.
11 Reply 5:5-7. The Song-Beverly Act limits the time
12 period of the implied warranty of merchantability.
13 Ehrlich, 801 F. Supp. 2d at 922 (C.D. Cal. 2010). The
14 coverage period of an implied warranty on a used
15 vehicle is coextensive with the duration of the express
16 warranty. Cal. Civ. Code § 1795.5(c).

17 Defendants state that Plaintiffs only allege in the
18 FAC that they experienced various defects shortly after
19 the purchase. FAC ¶ 10. As Defendants are not liable
20 to Plaintiffs for defects to their vehicle outside of
21 the thirty-day warranty period, Defendants argue that
22 it is necessary for Plaintiffs to plead that the
23 defects occurred within that period. However, the FAC
24 does not include facts indicating the duration of the
25 express warranty. As warrantors may extend the
26 warranty period beyond the minimum thirty days under
27 California law (Cal. Civ. Code § 1793.02(a)),
28 Plaintiffs' vehicle may have experienced the defects

1 beyond the thirty days, but still within the warranty
2 period. Because the Court must draw inferences in
3 favor of the non-moving party (Klarfeld, 944 F.2d at
4 585), Plaintiffs' claim that they experienced defects
5 shortly after their purchase, in addition to their
6 claims regarding the defects are sufficient to support
7 a breach of implied warranty claim.

8 Accordingly, the Court hereby **DENIES** Defendants'
9 Motion to Dismiss Plaintiffs' cause of action for
10 breach of implied warranty under the Song-Beverly Act
11 because Plaintiffs plead sufficient facts to support
12 their claim.

13 **C. Independent Claims Under the MMWA**

14 Defendants argue that Plaintiffs' Song-Beverly Act
15 causes of action for breach of express and implied
16 warranties determine whether their concurrent MMWA
17 claims are viable. Mot. 1:22-25. Plaintiffs argue
18 that the MMWA provides an independent cause of action.
19 Opp'n 1:21-23.

20 The MMWA allows a consumer to bring a suit "where
21 he claims to be damaged by the failure of a supplier,
22 warrantor, or service contractor to comply with any
23 obligation under the Magnuson-Moss Act or under a
24 written warranty, implied warranty, or other service
25 contract." 15 U.S.C. § 2301. It provides a federal
26 cause of action for state law express and implied
27 warranty claims. In re Sony Grand Wega KDF-E A10/A20
28 Series Rear Projection HDTV Television Litig., 758 F.

1 Supp. 2d 1077, 1102 (S.D. Cal. 2010).

2 The MMWA distinguishes between two types of
3 warranties: full warranties and limited warranties. In
4 re Apple iPhone 3G Prod. Liab. Litig., 859 F. Supp. 2d
5 1084, 1089-90 (N.D. Cal. 2012); see also 15 U.S.C. §
6 2303(a). The MMWA imposes minimum federal warranty
7 standards for full warranties and allows for an
8 independent cause of action for their breach.² Id.; see
9 also 15 U.S.C. § 2304. However, the MMWA does not
10 provide remedies for breach of "limited" warranties.
11 In re Apple iPhone 3G, 859 F. Supp. 2d at 1090. A
12 limited warranty is one that does not meet the federal
13 minimum standards for warranty set forth in section
14 2304. 15 U.S.C. § 2303(a)(2). The terms of a limited
15 warranty are more circumscribed than the requirements
16 established in the MMWA. Id.

17 The MMWA allows consumers to enforce limited
18 express warranties in federal court by borrowing state
19 law causes of action. In re Apple iPhone 3G, 859 F.
20 Supp. 2d at 1090 (citing Motor Vehicle Mfrs. Ass'n of
21 U.S., Inc. v. Abrams, 899 F.2d 1315, 1319 (2d Cir.
22 1990) ("the MMWA was intended by Congress to
23 supplement, not supplant, the rights and remedies
24 provided by state law")). Where a plaintiff only
25 alleges a violation of the MMWA insofar as a defendant

26
27 ²15 U.S.C. § 2303(a) defines a full warranty as a written
28 warranty that meets the federal minimum standards set forth in §
2304.

1 breached its warranties under state law without an
2 allegation that the defendant otherwise failed to
3 comply with the MMWA, the federal claim hinges on the
4 state law warranty claims. See Clemens, 534 F.3d at
5 1022 n.3; see also Birdsong, 590 F.3d at 958 n.2 ("the
6 substantive elements are the same under the Song-
7 Beverly Act and Magnuson-Moss Act; under both, the
8 court applies state warranty law"); see also In re Sony
9 Grand Wega, 758 F. Supp. 2d 1077 at 1102 ("the
10 Magnuson-Moss Warranty Act does not expand the rights
11 under state law express and implied warranty claims,
12 and dismissal of the state law claims requires the same
13 disposition with respect to an associated Magnuson-Moss
14 Warranty Act claim"). Thus, courts must look to state
15 substantive law to determine liability for breach of a
16 limited express warranty. Gusse v. Damon Corp., 470 F.
17 Supp. 2d 1110, 1116-17 (C.D. Cal. 2007).

18 In the immediate case, the Court hereby **DENIES**
19 Defendants' Motion to Dismiss Plaintiffs' claim for
20 breach of express warranty under the MMWA. The Court
21 need not consider whether Plaintiffs plead sufficient
22 facts supporting a separate federal cause of action for
23 breach of express warranty. As the MMWA is parasitic
24 to state law claims for limited warranties (In re Apple
25 iPhone 3G, 859 F. Supp. 2d at 1090), and Plaintiffs
26 sufficiently plead their express warranty claim under
27 the Song-Beverly Act, it follows that Plaintiffs
28 sufficiently plead their MMWA claims as well.

1 In addition, the Court hereby **DENIES** Defendants'
2 Motion to Dismiss Plaintiffs' claim for breach of the
3 implied warranty of merchantability. The MMWA does not
4 expand the rights under state law implied warranty
5 claims. In re Sony Grand Wega, 758 F. Supp. 2d 1077 at
6 1102. Although the MMWA creates a separate federal
7 cause of action for breach of implied warranty, courts
8 must look to the relevant state law to determine the
9 meaning and creation of any implied warranty. Gusse,
10 470 F. Supp. 2d at 1116 (citing 15 U.S.C. § 2301(7)).
11 Thus, because Plaintiffs plead facts sufficient to
12 support a breach of implied warranty claim under
13 California's Song-Beverly Act, Plaintiffs also plead
14 facts adequate to support a breach of implied warranty
15 claim under the MMWA.

16 Accordingly, the Court **DENIES** Defendants' Motion to
17 Dismiss Plaintiffs claims for breach of express
18 warranty and breach of implied warranty under the MMWA.

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21 ///

IV. CONCLUSION

For the foregoing reasons, the Court hereby **DENIES** Defendants' Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6) [17].

IT IS SO ORDERED.

DATED: July 11, 2014 RONALD S.W. LEW
HONORABLE RONALD S.W. LEW
Senior U.S. District Judge